

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

MILTON YOUNG,

RESPONDENT,

v.

BOONE ELECTRIC COOPERATIVE,

APPELLANT,

**TREASURER OF THE STATE OF MISSOURI
CUSTODIAN OF THE SECOND INJURY FUND,**

RESPONDENT.

DOCKET NUMBER WD76567 Consolidated with WD76568

DATE: April 14, 2015

Appeal From:

Labor and Industrial Relations Commission

Appellate Judges:

Alok Ahuja, Chief Judge, Presiding, and Joseph M. Ellis, Victor C. Howard, Thomas H. Newton, Lisa White Hardwick, James E. Welsh, Mark D. Pfeiffer, Karen King Mitchell, Cynthia L. Martin, Gary D. Witt, and Anthony Rex Gabbert, Judges

Attorneys:

Joshua K. Friel and Terry M. Evans, Jefferson City, MO, for Appellant.

Truman E. Allen, Columbia, MO, for Respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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**TREASURER OF THE STATE OF MISSOURI
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APPELLANT,

No. WD76567 Consolidated with WD76568

Labor and Industrial Relations Commission

Before: Alok Ahuja, Chief Judge, Presiding, and Joseph M. Ellis, Victor C. Howard, Thomas H. Newton, Lisa White Hardwick, James E. Welsh, Mark D. Pfeiffer, Karen King Mitchell, Cynthia L. Martin, Gary D. Witt, and Anthony Rex Gabbert, Judges

In this consolidated appeal, Boone Electric Cooperative seeks review of two decisions of the Labor and Industrial Relations Commission that awarded workers' compensation benefits to its employee, Milton Young ("Young").

As for the first injury, in 2008, while on a job, Young was walking back to his work truck to retrieve materials when he stepped on a "frozen dirt clod" and his left knee "buckled and popped," causing him to fall to the ground. His knee again popped as co-workers helped him to his feet. He sustained a knee sprain. Boone Electric argues that the award to Young for a 2008 injury to his left knee was erroneous because the injury did not arise out of his employment.

As for the second injury, in 2009, Young was running electric service to a building and needed to get into the back of his truck to access a spool of wire. Because the outriggers were engaged, the step up onto the platform on the back of the truck was approximately twenty-seven inches from the ground on uneven ground. In pulling himself up using two handles, Young felt a "pop" in his right shoulder. He sustained a right shoulder glenoid labral tear, partial biceps and subscapularis tears, and a full-thickness supraspinatus tear. Boone Electric argues that the Commission's award of benefits was erroneous because the incident was not a compensable accident.

AFFIRMED.

Majority Opinion holds:

- (1) Regarding the knee injury, Boone Electric argues that the application of Section 287.020.3(2)(b) prevents recovery for Young because Young failed to prove that the risk from which his knee injury arose — slipping on a frozen clod of dirt — was related to his employment. There was evidence that Young's injury was caused by an unsafe condition on the ground of the work site — the frozen dirt clod. Moreover, Young was at the work site because of his employment and, therefore, was exposed to the risk of slipping on the frozen dirt clod because of his employment. Accordingly, the risk from which Young's injury arose was related to his employment. The Dissent concurs as to this holding, and its opinion is solely directed at the Majority's opinion as to the shoulder injury.
- (2) As to the shoulder injury, in this matter of first impression, Boone Electric argues that Young did not suffer an accident as defined in Section 287.020.2. Section 287.020.2 defines "accident" as "an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused by a specific event during a single work shift. . . ." In pulling his weight up as high as twenty-seven inches as his job required, Young plainly sustained an act of excessive physical tension -- that is to say, Young suffered an "unusual strain." The varying nature of the ground and the necessity of having the truck stable and level result in this unavoidably high step -- roughly the equivalent of stepping onto a standard-height desk or kitchen table in one movement -- such that Young had to use two handles and careful balance to pull up the weight of his entire body and any tools in his belt. Under the statute, Young was not required to prove that an external, accidental force caused the injury. Accordingly, Young suffered an "unusual strain" so as to meet Section 287.020.2's definition of "accident." Just because Young's work required him to make this same movement on a regular basis does not take it out of the Worker's Compensation Law. Repeated unusual strain does not make it usual; it merely makes it repeated.

Opinion by: Gary D. Witt, Judge,

Date: April 14, 2015

with Joseph M. Ellis, Victor C. Howard, Thomas H. Newton,
James E. Welsh, Mark D. Pfeiffer, Karen King Mitchell,
Cynthia L. Martin, and Anthony Rex Gabbert, Judges, concurring.

Opinion concurring in part and dissenting in part by Judge Ahuja,

with Judge Lisa White Hardwick joining in the dissenting opinion:

The author dissents in part and would reverse the Commission's award of compensation for Young's right shoulder injury. In the author's view, Young's shoulder injury was not caused by an "unusual strain," as required by the accident definition contained in section 287.020.2, RSMo, because Young injured his shoulder while performing his normal work duties in the normal way. An "unusual" strain can only be found where a claimant experiences a level of physical demand or exertion which is out of the ordinary for that claimant's normal work responsibilities; that condition is not satisfied here.

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